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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LONNIE MOORE,)	CASE NO. 1:09 CV 1425
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
)	Magistrate Judge McHargh
)	
COMMISSIONER OF)	<u>MEMORANDUM OPINION</u>
SOCIAL SECURITY,)	<u>AND ORDER</u>
)	
Defendant.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Kenneth S. McHargh. (Docket #19.) The Magistrate Judge recommends that the Agreed Motion for Remand and Unopposed Motion for Destruction of Pages in the Administrative Record filed by the Parties on February 12, 2010 (Docket #18) be granted and that the decision of the Commissioner be reversed and remanded for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g).

On February 26, 2010, Defendant Commissioner of Social Security filed Objections for Clarification to the Report and Recommended Decision of Magistrate Judge McHargh. (Docket #20.) The Commissioner agrees with the findings of the Magistrate Judge, but states that language on page two of the Report and Recommendation stating, "The parties

also indicate that they will destroy all copies of the relevant pages in their possession” should instead read, “Plaintiff’s counsel has agreed to destroy the pages in all copies of the certified administrative record in her possession.” The Commissioner asks that the Report and Recommendation be adopted with this clarification.

Standard of Review for a Magistrate Judge’s Report and Recommendation

The applicable district court standard of review for a magistrate judge’s report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Conclusion

The Court has reviewed the Report and Recommendation *de novo*. The Court hereby ADOPTS IN PART and MODIFIES IN PART the Report and Recommendation of Magistrate Judge McHargh. (Docket #18.) The Agreed Motion for Remand and Unopposed Motion for Destruction of Pages in the Administrative Record (Docket #18) is hereby GRANTED. The Commissioner’s decision is hereby VACATED and the case is hereby REMANDED, pursuant to the fourth sentence of 42 U.S.C. § 405(g), to the Commissioner of Social Security according to the terms set forth in the Agreed Motion for Remand and Unopposed Motion for Destruction of Pages in the Administrative Record.

The Court hereby orders the Clerk to destroy the following nine pages in the certified

administrative records: Tr. 60-62, 76-78, 159-60, and 251. Further, the Report and Recommendation is hereby MODIFIED to the extent that the sentence reading "The parties also indicate that they will destroy all copies of the relevant pages in their possession," found on page 2 of the Report and Recommendation, is hereby substituted with the language, "Plaintiff's counsel has agreed to destroy the pages in all copies of the certified administrative record in her possession."

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: March 4, 2010